

D.T.E. 98-AD-8

Adjudicatory hearing in the matter of complaint of Joseph Masterson, relative to the rates and charges for electricity sold by Fitchburg Gas and Electric Light Company

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APPEARANCES:    Joseph Masterson  
                         165 Edgehill Road  
                         Sharon, Massachusetts 02067  
                         PRO SE  
                         Complainant

## ORDER GRANTING DEFAULT JUDGMENT

### I. INTRODUCTION

On February 18, 1998, Joseph Masterson ("Complainant") appeared before the Consumer Division of the Department of Telecommunications and Energy ("Department") to dispute bills rendered to him by the Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company"). On April 21, 1998, the Consumer Division found that the Complainant was responsible for the disputed amount of \$1,846.09.<sup>1</sup> The Complainant was dissatisfied with the decision of the Consumer Division, and, by letter dated May 1, 1998, requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E. 98-AD-8.

On May 19, 1998, the Consumer Division wrote the Complainant to confirm that his request for a formal hearing had been received and was being processed. The Complainant was informed that he would be notified of that proceeding's date and time by a separate letter. The Company was sent a copy of this letter.

Subsequently, the Hearing Officer contacted both the Complainant and the Company, and scheduled the adjudicatory hearing for June 30, 1998 at 10:30 a.m. at the Department's offices. On June 2, 1998, the Department issued an Order of Notice to both the Complainant and the Company that stated that the adjudicatory hearing would be conducted at the Department's offices on Tuesday, June 30, 1998 at 10:30 a.m. The face of this Notice stated, **"IF ANY PARTY**

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<sup>1</sup>In Joseph Masterson v. Fitchburg Gas & Electric Light Company, D.T.E. 98-9-I (1998), the Consumer Division states that the Complainant disputes an electric bill in the amount of \$1,846.09. The Department does not have more recent information concerning the amount of money in dispute in this matter.

**FAILS TO APPEAR, THE DEPARTMENT MAY ISSUE A DECISION AGAINST THE PARTY FAILING TO APPEAR AND/OR MAY DISMISS THE CASE."** (Emphasis as in original). The Notice also stated, "THE DEPARTMENT MAY CONSIDER RESCHEDULING THE HEARING IF A WRITTEN REQUEST, WITH STATED REASONS, IS RECEIVED BY THE DEPARTMENT NO LATER THAN 48 HOURS PRIOR TO THE HEARING. THE DEPARTMENT WILL DETERMINE WHETHER THE REQUEST DEMONSTRATES GOOD CAUSE FOR A CONTINUANCE." (Emphasis as in original).

On Tuesday, June 30, 1998, the Complainant and his expert witness, the Hearing Officer, and the stenographer, all appeared at the designated time in the hearing room. After waiting for approximately 40 minutes, and after determining that no message or communication had been received by the Department indicating or explaining that the Company had been unavoidably detained, the Department, on the record, entered a Motion for Default Judgment in the Complainant's favor on the grounds that the Company had failed to appear at the hearing (Tr. at 2-3).

## II. DISCUSSION

Although an informal hearing was held and an informal decision was issued previously by the Consumer Division, "[s]uch [informal] hearing [and decision] shall not be construed to be an 'adjudicatory proceeding' as defined by G.L. c. 30A." 220 C.M.R. § 25.02(4)(b). Both parties have a right to an adjudicatory proceeding, and this right expires unless the informal decision is appealed by either party within seven days of notification of the informal decision. 220 C.M.R. § 25.02(4)(c); Santos v. Boston Gas Company, D.P.U. 20269, at 5 (1981). Further, adjudicatory

hearings held by the Department are deemed to be de novo, meaning that the hearing is "new," and as such, all evidence offered at the informal hearing must be offered again. Machise v. New England Telephone Company, D.P.U. 87-AD-12, at 11 n.2 (1987); Santos at 5. Therefore, after a valid request for an adjudicatory hearing was made, the informal decision could not be interpreted as having satisfied both parties' right to an adjudicatory hearing. After the notice was issued, the Company was obligated to follow the procedure specified in the notice if it wanted to postpone the hearing. Prudeaux v. New England Telephone and Telegraph Company d/b/a/ NYNEX, D.P.U. 95-AD-24, at 4 (1997).

The Department followed all of the procedures required by G.L. c. 30A, § 11 and the specific requirements enumerated in 220 C.M.R. § 1.05(1) to ensure the parties in this matter had reasonable notice of the time and place of the hearing. In addition, the Company had many additional opportunities to learn of and be reminded of this proceeding. Fitchburg, and the other regulated companies, are frequently in the Department's offices on various matters. In fact, Fitchburg was present at hearings in the Department's offices on two other dockets the day before this case, and had ample opportunity to view the schedule of hearings for the week posted for public information throughout the Department's offices. Finally, a copy of this weekly report disclosing all upcoming hearings was sent, as it is every week, to the offices of the attorneys for the Company. Despite these measures and opportunities, the Company neither appeared at the scheduled hearing, nor contacted the Department to request postponement.

The Department has consistently held that when a complainant fails to attend scheduled hearings, that complainant has also failed to pursue his or her complaint, and that a failure to

pursue a complaint leads to dismissal of the case and reinstatement of the prior determination made by the Consumer Division. See Milioto v. Massachusetts Electric Company, D.P.U. 95-AD-15 (1996); Macamaux v. Commonwealth Electric Company, D.P.U. 94-AD-8 (1994); Scola v. Massachusetts Electric Company, D.P.U. 93-AD-36 (1994).

In the instant case, unlike those cited above, the informal decision found in favor of the Company, leading the Complainant to request an adjudicatory hearing, at which the Company failed to appear. Therefore, a reinstatement of the prior determination of the Consumer Division would again be in favor of the Company and thwart the very reason for the Complainant's request for the adjudicatory hearing.

Although not provided for expressly within the Department's regulations, the Department has granted motions for default judgment under similar circumstances. See Prudeaux, D.P.U. 95-AD-24 (1997); Noe v. Commonwealth Gas Company, D.P.U. 1310 (1983); Morton v. Boston Gas Company, D.P.U. 919 (1983). In Prudeaux, D.P.U. 95-AD-24, at 6, for instance, the Department granted NYNEX's request for a default judgment in its favor when Mrs. Prudeaux, who had previously prevailed at her informal hearing before the Consumer Division, failed to appear at the adjudicatory hearing requested by NYNEX.

Accordingly, because the Company failed to attend the scheduled hearing and thereby defend this case, the Motion for Default Judgment is granted, and the Company may not collect the amount in dispute from the Complainant.

III. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Motion for Default Judgment in favor of the Complainant be and hereby is GRANTED; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company may not collect the amount in dispute from the Complainant.

By Order of the Department,

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).